

FILED

AUG 05 2010

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

SARA S. NOZISKA,)	CV 09-143-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff filed a complaint on October 1, 2009 seeking judicial review of the decision by the Commissioner of Social Security denying her application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. § 401-433, and for supplemental security income benefits under Title XVI of the Act, 42 U.S.C. §§ 1381-1383(c). Plaintiff and Defendant each filed a motion for summary judgment on April 5, 2010 and May 21, 2010, respectively. Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation on June 30, 2010. Judge Lynch found that the Court's review is limited and that, after said

review, the ALJ's decision was based on substantial evidence and free of prejudicial legal error.

The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment (dkt #14) is DENIED and Defendant's Motion for Summary Judgment (dkt #20) is GRANTED. The Commissioner's decision is AFFIRMED.

The Clerk of Court is directed to enter judgment in favor of Defendant and to close the case.

Dated this 5th day of August, 2010.



Donald W. Molloy, District Judge
United States District Court